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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
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17 **Samuel Love,**  
18 Plaintiff,  
19 v.  
20 **Destination Maternity**  
21 **Corporation**, a Delaware  
22 Corporation; and Does 1-10,  
23 Defendants.

24 **Case No.**

25 **Complaint For Damages And**  
26 **Injunctive Relief For Violations**  
27 **Of: American's With Disabilities**  
28 **Act; Unruh Civil Rights Act**

17 Plaintiff Samuel Love complains of Destination Maternity Corporation,  
18 a Delaware Corporation; and Does 1-10 ("Defendants"), and alleges as  
19 follows:  
20

21 **PARTIES:**

22 1. Plaintiff is a California resident with physical disabilities. He is  
23 substantially limited in his ability to walk. He is a paraplegic who uses a  
24 wheelchair for mobility.

25 2. Defendant Destination Maternity Corporation owned Motherhood  
26 Maternity located at or about 230 W. Hillsdale Blvd., San Mateo California, in  
27 September 2019.

28 3. Defendant Destination Maternity Corporation owns Motherhood

1 Maternity (“Store”) located at or about 230 W. Hillsdale Blvd., San Mateo  
2 California, currently.

3       4. Plaintiff does not know the true names of Defendants, their business  
4 capacities, their ownership connection to the property and business, or their  
5 relative responsibilities in causing the access violations herein complained of,  
6 and alleges a joint venture and common enterprise by all such Defendants.  
7 Plaintiff is informed and believes that each of the Defendants herein,  
8 including Does 1 through 10, inclusive, is responsible in some capacity for the  
9 events herein alleged, or is a necessary party for obtaining appropriate relief.  
10 Plaintiff will seek leave to amend when the true names, capacities,  
11 connections, and responsibilities of the Defendants and Does 1 through 10,  
12 inclusive, are ascertained.

13

14       **JURISDICTION & VENUE:**

15       5. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California’s Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22       7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

25

26       **FACTUAL ALLEGATIONS:**

27       8. Plaintiff went to the Store in September 2019 with the intention to avail  
28 himself of its goods and to assess the business for compliance with the

1       disability access laws.

2       9. The Store is a facility open to the public, places of public  
3       accommodation, and business establishments.

4       10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
5       to provide accessible sales counters.

6       11. On information and belief, the defendants currently fail to provide  
7       accessible sales counters.

8       12. Additionally, one of the facilities, privileges or advantages enjoyed by  
9       customers at the Store is an electronic point of sale machine that has a display  
10      screen with directions and information for the customer, a card reader to take  
11      credit cards and buttons to be pressed. This permits easy and private  
12      transaction opportunities to customers at the Store.

13      13. Unfortunately, the display screen is mounted so that it is not visible by a  
14      wheelchair user. The information on the display screen is not visible from a  
15      viewpoint 40 inches above the floor. Moreover, the display screen is angled  
16      away from the viewer and faces the ceiling and the center line of the display  
17      screen is located about 45 inches above the floor. On information and belief,  
18      plaintiff alleges that this point of sale machine was installed sometime after  
19      1995 and is, therefore, subject to California Accessibility Standards in  
20      addition to ADA standards.

21      14. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
22      to provide accessible electronic point-of-sale machines that customers can use  
23      to swipe their credit cards.

24      15. On information and belief, the defendants currently fail to provide  
25      accessible electronic point-of-sale machines that customers can use to swipe  
26      their credit cards.

27      16. Plaintiff personally encountered these barriers.

28      17. By failing to provide accessible facilities, the defendants denied the

1 plaintiff full and equal access.

2       18. The lack of accessible facilities created difficulty and discomfort for the  
3 Plaintiff.

4       19. The defendants have failed to maintain in working and useable  
5 conditions those features required to provide ready access to persons with  
6 disabilities.

7       20. The barriers identified above are easily removed without much  
8 difficulty or expense. They are the types of barriers identified by the  
9 Department of Justice as presumably readily achievable to remove and, in fact,  
10 these barriers are readily achievable to remove. Moreover, there are numerous  
11 alternative accommodations that could be made to provide a greater level of  
12 access if complete removal were not achievable.

13       21. Plaintiff will return to the Store to avail himself of its goods and to  
14 determine compliance with the disability access laws once it is represented to  
15 him that the Store and its facilities are accessible. Plaintiff is currently deterred  
16 from doing so because of his knowledge of the existing barriers and his  
17 uncertainty about the existence of yet other barriers on the site. If the barriers  
18 are not removed, the plaintiff will face unlawful and discriminatory barriers  
19 again.

20       22. Given the obvious and blatant nature of the barriers and violations  
21 alleged herein, the plaintiff alleges, on information and belief, that there are  
22 other violations and barriers on the site that relate to his disability. Plaintiff will  
23 amend the complaint, to provide proper notice regarding the scope of this  
24 lawsuit, once he conducts a site inspection. However, please be on notice that  
25 the plaintiff seeks to have all barriers related to his disability remedied. See  
26 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
27 encounters one barrier at a site, he can sue to have all barriers that relate to his  
28 disability removed regardless of whether he personally encountered them).

1       **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
2 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4       23. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint.

7       24. Under the ADA, it is an act of discrimination to fail to ensure that the  
8 privileges, advantages, accommodations, facilities, goods and services of any  
9 place of public accommodation is offered on a full and equal basis by anyone  
10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
11 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 12           a. A failure to make reasonable modifications in policies, practices,  
13           or procedures, when such modifications are necessary to afford  
14           goods, services, facilities, privileges, advantages, or  
15           accommodations to individuals with disabilities, unless the  
16           accommodation would work a fundamental alteration of those  
17           services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18           b. A failure to remove architectural barriers where such removal is  
19           readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
20           defined by reference to the ADA Standards.
- 21           c. A failure to make alterations in such a manner that, to the  
22           maximum extent feasible, the altered portions of the facility are  
23           readily accessible to and usable by individuals with disabilities,  
24           including individuals who use wheelchairs or to ensure that, to the  
25           maximum extent feasible, the path of travel to the altered area and  
26           the bathrooms, telephones, and drinking fountains serving the  
27           altered area, are readily accessible to and usable by individuals  
28           with disabilities. 42 U.S.C. § 12183(a)(2).

1       25. When a business provides facilities such as sales counters, it must  
2 provide accessible sales counters.

3       26. Here, accessible sales counters have not been provided.

4       27. When a business provides facilities such as electronic point-of-sale  
5 machines, it must provide accessible electronic point-of-sale machines.

6       28. Here, accessible electronic point-of-sale machines have not been  
7 provided.

8       29. The Safe Harbor provisions of the 2010 Standards are not applicable  
9 here because the conditions challenged in this lawsuit do not comply with the  
10 1991 Standards.

11      30. A public accommodation must maintain in operable working condition  
12 those features of its facilities and equipment that are required to be readily  
13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14      31. Here, the failure to ensure that the accessible facilities were available  
15 and ready to be used by the plaintiff is a violation of the law.

16

17 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
18 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
19 Code § 51-53.)**

20      32. Plaintiff repleads and incorporates by reference, as if fully set forth  
21 again herein, the allegations contained in all prior paragraphs of this  
22 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
23 that persons with disabilities are entitled to full and equal accommodations,  
24 advantages, facilities, privileges, or services in all business establishment of  
25 every kind whatsoever within the jurisdiction of the State of California. Cal.  
26 Civ. Code § 51(b).

27      33. The Unruh Act provides that a violation of the ADA is a violation of the  
28 Unruh Act. Cal. Civ. Code, § 51(f).

34. Defendants' acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

35. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

## **PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: October 18, 2019

CENTER FOR DISABILITY ACCESS

By:



Amanda Seabock, Esq.  
Attorney for plaintiff